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*Attorneys for Defendant  
Frederic Bourke, Jr.*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X	:	
UNITED STATES OF AMERICA	:	
	:	
- against -	:	05 Crim. 518 (SAS)
	:	
FREDERIC BOURKE, JR.,	:	<b>NOTICE OF MOTION</b>
	:	
Defendant.	:	
----- X	:	

WHEREAS, at trial, Government witness Thomas Farrell acknowledged receiving a payment of \$700,000 in 1998 from Viktor Kozeny, and further acknowledged failing to report that income on his 1998 U.S. federal income tax return, *see* Trial Transcript at 690-93; and

WHEREAS, the Government has stipulated as follows: (1) Thomas Farrell's original 1998 tax return was filed in or about June 2000. Mr. Farrell signed the return before it was filed with the Internal Revenue Service. (2) Immediately above Mr. Farrell's signature on the original

1998 return appears the following printed language: "Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements and to the best of my knowledge and belief they are true, correct and complete." (3) Mr. Farrell's original 1998 return lists as wage, salaries, tips, etc., the amount of \$87,975. The original 1998 return does not include the \$700,000 that Mr. Farrell received in April and May 1998. The original return indicates that Mr. Farrell owes no 1998 tax. (4) In or about December, 2005, Mr. Farrell filed an amended 1998 tax return. Mr. Farrell signed the amended return before it was filed. The amended return includes the \$700,000 that Mr. Farrell received in April and May 1998. (5) According to the amended 1998 return, Mr. Farrell owes \$239,247 in tax for 1998, not including interest and any applicable penalties. *See* Trial Transcript at 2650-51;

PLEASE TAKE NOTICE that defendant Frederic A. Bourke, Jr. will move this Court before the Honorable United States District Judge Shira A. Scheindlin, at the United States Courthouse, 500 Pearl Street, New York, New York 10007, at a date and time to be determined by the Court, for an order approving the following jury charge:

"There has been evidence that witness Thomas Farrell lied under penalty of perjury on his original 1998 income tax return. I must warn you that the testimony of this witness should be viewed cautiously and weighed with great care. It is, however, for you to decide how much of his testimony, if any, you wish to believe.";

and

(2) for such other and further relief as the Court may find just and proper.

Dated: June 30, 2009

By: /s/ Harold A. Haddon

Harold A. Haddon (HH-3929)

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